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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL P. CONNELLY

Appeal 2009-005024
Application 10/764,740
Technology Center 3700

Decided: September 24, 2009

Before TONI R. SCHEINER, DONALD E. ADAMS, and ERIC GRIMES,
Administrative Patent Judges.

SCHEINER, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 1-22, directed to a computerized gaming system. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Claim 1 is representative of the subject matter on appeal:

1. A computerized gaming system, comprising:
a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a reel slot machine wagering game on which monetary value can be wagered; and
an audio module, the audio module operable to play an audio track during reel spins, the audio module further operable to maintain audio track rhythm over multiple reel spins.

The Examiner rejected the claims as follows:

- Claims 1, 2, 4-10, 12-18, and 20-22¹ under 35 U.S.C. § 102(e) as anticipated by Hecht (US 2003/0073491 A1, published April 17, 2003).
- Claims 3 and 11 under 35 U.S.C. § 103(a) as unpatentable over Hecht and Bates (US 2003/0130020 A1, published July 10, 2003).
- Claim 19 under 35 U.S.C. § 103(a) as unpatentable over Hecht and Tsukahara (US 6,416,411 B1, issued July 9, 2002).
- Claims 21 and 22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (new matter).

We affirm the anticipation and obviousness rejections, and reverse the new matter rejection.

¹ Claims 21 and 22 were not included in the heading of this rejection, but were discussed individually and at length on pages 8 and 9 of the Final Rejection mailed June 18, 2007, and on pages 9 and 10 of the Examiner's Answer. Additionally, in responding to the anticipation rejection over Hecht, Appellant requested "[r]eversal of the rejection . . . of the pending claims 1-22" (App. Br. 11). Therefore, we understand claims 21 and 22 to be subject to the anticipation rejection over Hecht.

ANTICIPATION

Issue

The issue raised by this rejection is whether Appellant has established that the Examiner erred in finding that Hecht's computerized gaming system includes an audio module operable to maintain the rhythm of an audio track over multiple reel spins.

Findings of Fact

FF1 Claim 1 is directed to a computerized gaming system with an "audio module operable to play an audio track during reel spins, the audio module further operable to maintain audio track rhythm over multiple reel spins."

FF2 According to the Specification, maintaining the rhythm of the audio track includes "playing a continuous looping audio track that is faded in and out or by restarting the audio track at a point calculated to maintain rhythm with the audio presented during a preceding reel spin. A continuous audio track is used in some embodiments, and is played continuously between reel spins" (Spec. 4: 9-13).

FF3 Hecht describes a computerized gaming device which includes an audio module - specifically, "a processor or central processing unit ('CPU') 38; a memory device 40 for storing program code or other data; . . . a sound card 42; a plurality of speakers 36; and one or more input devices" (Hecht ¶ 38).

FF4 Memory device 40 stores "music code 74 [which] includes a set of instructions that the CPU 38 uses to determine the type, duration, and volume of the files 64a to 64c to be played. . . . [T]he music code 74 . . .

[may be] a commercially available code such as music instrument digital interface (MIDI)” (Hecht ¶ 53).

FF5 The “sound card 42 . . . enables the CPU 38 in coordination with a game program stored in memory device 40 to manipulate and output sounds . . . through [the] speakers” (Hecht ¶ 47). The sound card also “includes a sound processor 66 which drives a mixer 68 and a digital to analog converter 70” (*id.* at ¶ 52).

FF6 The “sound files may be modified . . . to: (i) coincide with one or more other sound files; (ii) coincide with one or more game events; or (iii) to produce a melody or song” (Hecht ¶ 11).

FF7 “Sound-causing events . . . include initiation or triggering of a primary or bonus game; any type of loss or accumulation of credits; a credit roll-up; an award of a jackpot; any type of random generation event, such as the spin of the reels 34 . . . or a display designed to attract a play[er] to play gaming device 10, etc.” (Hecht ¶ 54.)

FF8 Modifications involve changing the pitch, tempo, length of playing time, and/or volume of sound files, including sound effect files and background music files. “[W]hen the sound file modification includes a plurality of different types of changes, the changes can occur simultaneously or sequentially.” (Hecht ¶¶ 63, 64, 67, 73.) “For example, a pitch-shifted sound file can be played to fill a time gap left between two other sound files. The two other sound files dictate the duration of the time gap and the processor pitch-shifts a sound file based on the time gap” (*id.* at ¶ 65).

FF9 In addition, “the background music file can be modified [by the processor] so that it only plays while paytones are played” (Hecht ¶ 64).

Principles of Law

“To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“Any arguments or authorities not included in the brief or a reply brief . . . will be refused consideration by the Board, unless good cause is shown.”).

Analysis

The Examiner rejected claims 1, 2, 4-10, 12-18, and 20-22 as anticipated by Hecht. Appellant has not argued the claims separately, therefore, we select claim 1 as representative for the purpose of deciding the issues raised by this rejection. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

The Examiner found:

Re claim 1: Hecht et al discloses a computerized gaming system, comprising: a gaming module (10a), comprising a processor (38) and gaming code (72) which is operable when executed on the processor (38) to conduct a reel slot machine wagering game on which monetary value can be wagered . . . ; and an audio module/ *sound card* (42), the audio module operable to play an audio track/ *music*, *sound files* during reel spins, the audio module (42) further operable to maintain audio track rhythm over multiple reel spins[.]

(Ans. 4.)

Appellant contends that Hecht “fails to teach the claimed ‘audio module further operable to maintain audio track rhythm over multiple wheel [i.e., reel] spins’, and so fails to anticipate any of the pending claims (App. Br. 11). Appellant contends that “Hecht does not teach maintaining the rhythm of a wheel spin audio track over multiple wheel spins, such as by

playing the track continuously and selectively muting the track between wheel spins” (*id.* at 10). Appellant contends, in Hecht’s system, “each time a player plays again or initiates another reel spin . . . , playing of the reel spin sound file begins anew . . . in conjunction with the beginning of the random generation display” (*id.* at 11), and “each reel spin is an independent random generation” (*id.*).

Appellant’s arguments are not persuasive. Claim 1 merely requires an audio module “operable to” maintain, i.e., capable of maintaining, the rhythm of an audio track over multiple reel spins. Moreover, the claim does not require the audio module to be operable to play any particular type of audio track, or to be operable to interrupt or mute the audio track between reel spins. Thus, Hecht’s audio module need only be operable to maintain the rhythm of an audio track, any audio track, over multiple reel spins in order to anticipate the claimed invention. And the Specification teaches that maintaining the rhythm of an audio track can be as simple as playing an audio track continuously between reel spins (FF2).

While it’s true that sound files are modified to coincide, and restart, with a new reel spin in certain of Hecht’s embodiments, Hecht also teaches that the audio module is capable of modifying sound files by altering their duration of play, and that the audio module is capable of playing sound effect files coordinated to gaming events concurrently with (i.e., over) background music (FF6, FF8). The audio module is even capable of pitch-shifting a sound file to fill a time gap left between two other sound files (FF8). Moreover, Hecht teaches that a “background music file can be modified so that it only plays while paytones are played” (FF9). It follows that the audio module is also capable of leaving the background music

unmodified, to play continuously, thereby maintaining its rhythm over multiple reel spins.

Conclusions of Law

Appellant has not established that the Examiner erred in finding that Hecht's computerized gaming system includes an audio module operable to maintain the rhythm of an audio track over multiple reel spins.

Accordingly, the rejection of claim 1 as anticipated by Hecht is affirmed. The rejection is also affirmed with respect to claims 2, 4-10, 12-18, and 20-22, as they were not separately argued.

OBVIOUSNESS

The Examiner rejected claims 3 and 11 as unpatentable over Hecht and Bates (Ans. 10; Final Rej.² 9), and claim 19 as unpatentable over Hecht and Tsukahara (Ans. 11; Final Rej. 10).

Appellant did not respond to either of these rejections in the Appeal Brief, or in the Reply Brief. Accordingly, both rejections are summarily affirmed.

NEW MATTER

The Examiner rejected claims 21 and 22 as failing to comply with the written description requirement. Specifically, the Examiner found the limitation "audio module further operable to stop presentation of the audio track between reel spins while [maintaining] audio track rhythm over multiple reel spins" to be new matter.

However, as discussed above, the Specification teaches that the audio track can be restarted at a point calculated to maintain rhythm with the audio

² Final Rejection mailed June 18, 2007.

track presented during a preceding reel spin in certain embodiments (FF2). The implication is that the audio track is stopped between reel spins in those embodiments.

The rejection of claims 21 and 22 for failing to comply with the written description rejection is reversed.

SUMMARY

- The rejection of claims 1, 2, 4-10, 12-18, and 20-22 under 35 U.S.C. § 102(e) as anticipated by Hecht is affirmed.
- The rejection of claims 3 and 11 under 35 U.S.C. § 103(a) as unpatentable over Hecht and Bates is affirmed.
- The rejection of claim 19 under 35 U.S.C. § 103(a) as unpatentable over Hecht and Tsukahara is affirmed.
- The rejection of claims 21 and 22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (new matter) is reversed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED

Ssc:

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